IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7445 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JASHPAL M PUROHIT

Versus

SECRETARY

Appearance:

MR PK JANI for Petitioners

MR MK OZA for Respondent No. 1

MR RV DESAI AGP for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/08/2000

ORAL JUDGEMENT

#. Heard Mr.P.K.Jani, learned advocate appearing on behalf of the petitioners and Mr. M. K. Oza, learned advocate appearing for the respondent Nos. 1 & 2. Though notice has been served on the respondent No.3,

none appeared on behalf of the respondent No.3. Learned AGP Mr.R. V. Desai on behalf of District Development Officer, District Panchayat, Banaskantha.

#. In the present petition, the prayer which has been made by the petitioners in para 13 A is to direct the respondent Nos. 1 & 2 not to terminate the services of the petitioners, except in accordance with law and the second prayer that respondent No.2 has no power or authority to pass any oral order of termination, without following any procedure whatsoever. The list of concerned petitioners has been produced on record which is at Annexure-A on page-9 of the petition and accordingly, in all 18 persons who were working as Clerk and Watchman in the year 1987-89. In response to the said petition, affidavit-in-reply has been filed by Shri N. J. Bhatt, Secretary, Gram Panchayat, Ambaji on behalf of the respondent Nos. 1 & 2 on 29th October, 1991. In para-5 of the said reply, it is stated by the respondents that the petitioners have been discharged from taking their services in the Octroi Department as alleged, by the Gram Panchayat, Ambaji with effect from 9-10-1991 as their services were no longer required by Gram Panchayat and also their services were never on any permanent an temporary regular establishment of the Ambaji Gram Panchayat. It is also further stated in para-12 that no doubt the octroi collection work, at present is still there in the Gram Panchayat, but all the petitioners have been discharged with effect from 9-10-1991.

#. In view of these averments made in the reply by the respondents, services of the petitioners have already been terminated with effect from 9th October, 1991. Admittedly, the present petition has been filed on 11th October, 1991 before this Court challenging the action of the respondent Nos. 1 & 2 with prayer to direct the respondent Nos. 1 & 2 not to terminate services of the petitioners. In view of above facts and circumstances, this Court cannot go into disputes between the parties. However, if termination order is passed by the respondents on 9th October, 1991, then the petitioners can approach the machineries under the Industrial Disputes Act, 1947 [hereinafter referred to as `the Act' for short] for challenging the very termination order which has been passed by the respondents against the petitioners. It is an admitted fact that the petition has been filed on 11th October, 1991 and RULE has been issued by this Court on 4th February, 1992 which was made returnable on 23rd March, 1992.

#. In view of aforesaid facts and circumstances, this Court is of the opinion that the termination order which has been passed by the respondent can be challenged by the petitioners before the appropriate forum under the machinery provided under the Act. As and when the petitioners may approach to the Conciliation Officer or the Assistant Commissioner of Labour under the provisions of the Industrial Disputes Act, 1947 challenging the order of termination dated 9th October, 1991, the appropriate authority concerned shall entertain the said industrial dispute which will be raised by the petitioners under Section 2-A of the Act and delay occurred in challenging the termination order by the petitioners on account of pendency of the present petition from 11th October, 1991 to till filing of such proceedings, may not come in the way of the petitioners and the concerned authority will consider and treat the said delay occurred because of the pendency of the present petition. The concerned authority and / or the Conciliation Officer will also consider the fact that in the reply filed by the respondent before this Court, wherein also it is stated by the respondent authority that the present petition is not maintainable and proper forum is the Labour Court. Considering this fact also, the Conciliation Officer will entertain the such Industrial Disputes that may be challenged against the impugned termination order without taking into account the delay period occurred on account of pendency of the present petition.

#. In view of above discussion and observations as aforesaid, the petition is disposed of. Rule discharged with no order as to costs.

Date : 25-8-2000 [H.K.Rathod, J.]

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